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MEMORANDUM

TO: Mary Henry and Andrew O'Connor
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: September 1, 2017
SUBJECT: Proposed initiative measure 2017-2018 #46 concerning severance taxes on oil and gas

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Earlier versions of this proposed initiative, proposed initiatives 2017-2018 #20, 2017-2108 #38, and 2017-2018 #44, were the subject of memoranda dated April 5, 2017, July 17, 2017, and August 21, 2017, which were discussed at public meetings on April 7, 2017, July 19, 2017, and August 23, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. For tax years that begin on and after January 1, 2019, to make the following changes to the oil and gas severance tax:
 - a. To increase the tax rate by 5 percent;
 - b. To halve the production amounts that qualify for the stripper well exemption; and
 - c. To eliminate the credit allowed against the severance tax for property taxes paid; and
2. To modify the allocation of the oil and gas severance tax by requiring a portion of the revenue to be used exclusively for establishing all-day kindergarten and public school funding and for a new program that provides medical care and treatment for people suffering negative health impacts caused by oil and gas production in those communities impacted by oil and gas production.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. The format that you have used to make changes to section 39-29-105 (1)(b) is confusing because:
 - a. The amending clause for section 2 of the proposed initiative states that it is adding a new paragraph, but there is already an existing subsection (1)(b);
 - b. The subsection is not included in the text after the headnote, but prior to the provision (for example, "(1)(b) FOR THE YEARS..."); and
 - c. The version of subsection (1)(b) from proposed initiative 2017-2018 #44 was deleted using strikethrough type, but this language is different from the language in the current statute. As previously discussed at related review and comment meetings, the rates are different from current statutory rates. In addition, the language includes the following sentence, which was repealed by House Bill 08-1083: "Nothing in this

paragraph (b) shall exempt a producer of oil and gas from submitting a production employee report as required by section 39-29-110 (1)(d)(I)."

2. A proposed initiative that is submitted for review and comment should only include changes to the current law, and should not include redlined changes from prior versions of the initiative. Accordingly, it is unnecessary to include the deleted paragraph (1)(b) on page 2, and that language should be removed from the draft altogether—as opposed to deleting it using strikethrough type.
3. Instead, the changes to section 39-29-105 (1)(b) should be shown by amending the current law. Based on the new proposed version of subsection (1)(b), the proposed change would appear as follows:

SECTION 2. In Colorado Revised Statutes, 39-29-105, **amend** (1)(b); and **add** (1)(c) as follows:

39-29-105. Tax on severance of oil and gas. (1) (b) ~~In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000,~~ FOR THE YEARS PRIOR TO JANUARY 1, 2019, a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce ~~fifteen~~ 15 barrels per day or less of oil and gas produced from wells that produce ~~ninety thousand~~ 90000 cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. The tax for oil and gas shall be at the following rates of the gross income:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%

4. If you prefer to repeal all of the existing language and then show the language as new language, the amending clause would still be the same (for example, "In Colorado Revised Statutes, 39-29-105, amend (1)(b) as follows:") and you would strike through all of the existing statutory language, and then add your language in small caps. But given how much of the language is unchanged, it seems like the standard drafting practice shown in comment 3 would be easier for a voter to understand.
5. Each statutory section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. The current amending clauses do not accurately describe the changes being made in the proposed initiative. The following are the problems and a proposed clarification:

- a. In section 2 of the proposed initiative, section 39-29-105 (1)(b) is being amended and a new subsection (1)(c) is being added, but neither change is described in the amending clause. This should be written as:
"SECTION 2. In Colorado Revised Statutes, 39-29-105, **repeal** (1)(b); and **add** (1)(c) as follows:".
 - b. In section 4 of the proposed initiative, section 39-29-108 (1) introductory portion and (2) are being amended and subsection (2.3) is added, but only the amendment to subsection (2) is described. This should be written as: **"SECTION 4.** In Colorado Revised Statutes, 39-29-105, **amend** (1) introductory portion and (2); and **add** (2.3) as follows:"; and
 - c. In section 5 of the proposed initiative, a new section 39-29-110.5 is added to the statutes, but it is described as "(5)." Instead, this should be written as **"SECTION 5.** In Colorado Revised Statutes, **add** 39-29-110.5 as follows:".
6. The following questions relate to the amended version of section 39-29-105 (1)(b):
- a. There is no verb in the first clause of the first sentence. Is it your intention to establish a tax with this language? If so, you should rewrite the sentence to explicitly do so. (For example, see the existing language that was deleted or the language you included in the new subsection (1)(c): "There shall be levied, collected, and paid . . .")
 - b. The phrase "In addition to any other tax" was deleted. Given that this changes the current law and is different from the language in the new subsection (1)(c), what is the effect of this deletion?
 - c. You have deleted the phrase "for each taxable year commencing on and after January 1, 2000," and replaced it with the phrase "for the years prior to January 1st, 2019,". Taxable years prior to January 1, 2000, would appear to meet your new date restriction, but those years were subject to the tax under section 39-29-105 (1)(a), C.R.S. Do you intend for your new subsection (1)(b) to change the tax levied for years that are prior to January 1, 2000?
 - d. Rather than the phrase "taxable years" subsection (1)(b) applies to "years prior to January 1, 2000." Does this mean "taxable years"? If so, then the adjective "taxable" should be added for the sake of consistency. If not, what does it mean?

7. In sections 39-29-105 (1)(b) and 39-29-108 (1) introductory portion and (2) you make amendments to existing statute; however, the language used in the proposed initiative does not reflect the current statutes but rather an older version of the statutes. Please consider revising so that the amendments to those sections are to the 2017 Colorado Revised Statutes and not to the statutes from a prior year.
8. In section 39-29-110.5 you use the word "deprived." Do you mean "derived"?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. It is standard drafting practice to use SMALL CAPITAL LETTERS (rather than ALL CAPS) to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes. All instances where new language is being added to the statutes should be in SMALL CAPITAL LETTERS, and only language being removed from current statutes needs to be in ~~stricken type~~. Existing language from the Colorado Revised Statutes should be included in lower case, with normal capitalization.
2. In section 39-29-110.5 (1)(a) "stailization" should be spelled "stabilization."
3. In section 39-29-108 (2.3) you say "fifty-six percent shall credited to. . . ." It appears that this should be "fifty-six percent shall **be** credited to. . . ." (Emphasis added.)
4. In section 39-29-110.5 (1)(b), you say "The moneys in the severance tax stabilization trust fund be held in two accounts. . . ." It appears that this should be "The moneys in the severance tax stabilization trust fund **shall** be held in two accounts. . . ." (Emphasis added.)
5. In section 39-29-110.5 (1)(b)(I) it appears as though you have duplicate language that needs to be removed. For example, "Ten percent of the severance tax receipts **credited to the severance tax receipts** credited to the severance tax stabilization fund. . . ." (Emphasis added to show duplicate language.)